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*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

\* \* \* \* \*

UNITE HERE HEALTH, by and through its  
fiduciary, Matthew Walker,

Plaintiff,

vs.

DESERT PALACE, INC. dba CAESAR'S  
PALACE, a Nevada corporation; BISTRO  
CENTRAL, LV, LLC dba CENTRAL 24/7, a  
Nevada limited liability company; CARL  
HALVORSON, individually; JOHN DOES I-  
X, inclusive; ROE ENTITIES I-X, inclusive,

Defendants.

Case No.: 2:13-cv-0069-GMN-PAL

**STIPULATION AND ORDER  
WITHDRAWING MOTION TO  
STRIKE CERTAIN DEFENSES  
ASSERTED BY DESERT PALACE,  
INC.**

IT IS HEREBY STIPULATED AND AGREED between counsel for Plaintiff UNITE  
HERE Health and for Defendant/Cross-Claimant Desert Palace, Inc. ("DPI") and for Defendants  
BISTRO CENTRAL, LV, LLC and CARL HALVORSON ("Bistro Defendants") that in order to  
avoid the expense of fully briefing the Court regarding issues raised by the Plaintiff in its Motion  
to Strike Defenses [Doc. #9] the Plaintiff will, within five (5) days after court approval of this  
Stipulation, amend the Complaint by revising its first cause of action to plead 29 U.S.C. § 1145

1 and to address certain concerns voiced by DPI. (A copy of Plaintiff's First Amended Complaint  
2 is included herewith as Exhibit A.)

3 Defendant DPI will, within five (5) days after the First Amended Complaint is filed,  
4 submit its Second Amended Answer and Crossclaim in which DPI will omit the defenses listed  
5 as numbers 5, 6, 7, 8 and 9 in DPI's Amended Answer and Crossclaim [Doc. #15], and in which  
6 DPI will revise the text of the affirmative defense listed as no. 3 in the Amended Answer and  
7 Crossclaim [Doc. #15]. (A copy of DPI's Second Amended Answer and Crossclaim is attached  
8 as Exhibit B.)

9 The Bistro Defendants will, within five (5) days after the First Amended Complaint is  
10 filed, submit a First Amended Answer to the First Amended Complaint in which they will omit  
11 the affirmative defenses that appear as numbers 3 and 4 in their original Answer. (A copy of the  
12 Bistro Defendants' First Amended Answer is attached as Exhibit C.)

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1 Defendant Bistro Central, LV, LLC will file its answer to DPI's Second Amended  
2 Answer and Crossclaim within five (5) days after DPI files its Second Amended Answer and  
3 Crossclaim.

4 All parties agree that the Motion to Strike [Doc. #9] shall be withdrawn.

5 Dated: April 10, 2013

Dated: April 10, 2013

6 CHRISTENSEN JAMES & MARTIN

LITTLER MENDELSON, P.C.

7 By: /s/ Daryl E. Martin  
Kevin B. Christensen, Esq.  
8 Daryl E. Martin, Esq.  
Laura Wolff, Esq.

By: /s/ Dustin L. Clark  
Rick D. Roskelley, Esq.  
Dustin L. Clark, Esq.

9 Attorneys for Plaintiff  
10 UNITE HERE HEALTH

Attorneys for Defendant  
DESERT PALACE, INC.

11  
12 Dated: April 10, 2013

13 JOLLEY URG A WIRTH WOODBURY & STANDISH

14 By: /s/ Tyler Ure  
L. Christopher Rose, Esq.  
15 Tyler Ure, Esq.

16 Attorneys for Defendants  
BISTRO CENTRAL, LV, LLC  
17 and CARL HALVORSON

18  
19 IT IS SO ORDERED.

20   
21 \_\_\_\_\_  
Gloria M. Navarro  
22 United States District Judge

23 **DATED: 04/12/2013**  
24  
25  
26  
27  
28

**Exhibit A**

**Exhibit A**

**CHRISTENSEN JAMES & MARTIN**

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*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

\* \* \* \* \*

UNITE HERE HEALTH, by and through its  
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Plaintiff,

vs.

DESERT PALACE, INC. dba CAESAR'S  
PALACE, a Nevada corporation; BISTRO  
CENTRAL, LV, LLC dba CENTRAL 24/7, a  
Nevada limited liability company; CARL  
HALVORSON, individually; JOHN DOES I-  
X, inclusive; ROE ENTITIES I-X, inclusive,

Defendants.

Case No.:

[Proposed]

**AMENDED COMPLAINT FOR  
BREACH OF CONTRACT, BREACH  
OF FIDUCIARY DUTY and  
INJUNCTIVE RELIEF**

COMES NOW the Plaintiff, UNITE HERE Health (formerly the HEREIU Welfare Fund) ("Welfare Fund"), acting by and through its fiduciary, Matthew Walker, and for its claims for relief against Defendants, complains, alleges and asserts as follows:

**JURISDICTION & VENUE**

1. This Court has jurisdiction of this case pursuant to § 301(a) of the Labor-Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)] and § 502(e) of the Employee Retirement Income Security Act of 1974, as amended [29 U.S.C. § 1132(e)(1)].

1 Pursuant to 28 U.S.C. § 1367 this Court has ancillary jurisdiction over any secondary causes of  
2 action.

3 2. The Welfare Fund maintains an office for the purpose of administering benefits in  
4 Las Vegas Nevada, therefore venue is proper in this District pursuant to ERISA § 502(e)(2) [29  
5 U.S.C. § 1132(e)(2)].

6 **PARTIES & GENERAL ALLEGATIONS**

7 3. The Welfare Fund is an express trust created pursuant to written declarations of  
8 trust, consistent with § 302(c) of the Labor-Management Relations Act of 1947, as amended [29  
9 U.S.C. § 186(c)].

10 4. At all times material herein, the Culinary Workers Union, Local 226, and/or  
11 Bartenders Union, Local 165 (“Unions”) have been labor organizations representing employees  
12 in the hotel/casino and hospitality industries in southern Nevada. The Unions are labor  
13 organizations representing employees in an industry affecting commerce within the meaning of §  
14 301(a) of the Labor Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)]. At all  
15 times material herein the Local Joint Executive Board of Las Vegas has been a contracting agent  
16 for the Unions.

17 5. Defendant Bistro Central, LV, LLC dba Central 24/7 (“Bistro”) is a Nevada  
18 limited liability company doing business as a dining facility located inside Caesar’s Palace at  
19 One Caesars Palace Drive, Las Vegas, Nevada.

20 6. Defendant Carl Halvorson (“Halvorson”) is an individual and is the controlling  
21 manager, member, shareholder, director, officer, principal, partner and/or key employee of  
22 Defendant Bistro.

23 7. At all times material herein, Defendant Halvorson has been a member, manager,  
24 officer, director, owner, agent and/or individual whose employment duties with Bistro required  
25 decision making regarding the operations, hiring/firing of work force, directing labor relations,  
26 management, keeping corporate records and company books, managing financial affairs,  
27 payment of expenses and accounts payable, tracking employee hours, preparing and processing  
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1 payroll and remittance reports, contributions and payments to the Welfare Fund for each hour of  
2 covered labor performed.

3 8. At times material herein, Defendant Halvorson and/or John Does I-X and/or Roe  
4 Entities I-X were and are the alter-egos and/or guarantors of Defendant Bistro, and are jointly  
5 and severally liable for all of the Defendants' delinquencies, damages and obligations owed to  
6 the Welfare Fund.

7 9. Defendant Desert Palace, Inc. dba Caesar's Palace ("Caesar's") is a Nevada  
8 corporation located at One Caesars Palace Drive, Las Vegas, Nevada.

9 10. The true names and capacities, whether partnership, individual, corporate,  
10 associate or otherwise of Defendants John Does I-X, inclusive, and Roe Entities I-X, inclusive,  
11 are unknown to the Welfare Fund at this date. Said Defendants are named herein by fictitious  
12 names, but may be responsible or liable to the Plaintiff by virtue of the actions hereinafter  
13 described and Plaintiff reserves the right to amend the Complaint to insert any additional  
14 charging allegations, together with the true identities and capacities, when the same have been  
15 ascertained.

16 11. On or about July 11, 2008, Caesar's executed and delivered that certain Collective  
17 Bargaining Agreement by and between Caesar's and the Local Joint Executive Board of Las  
18 Vegas ("Caesar's CBA" or "CBA"), whereby Caesar's agreed to be bound by the terms and  
19 conditions of Caesar's CBA, and by the terms and conditions of the Trust Agreement utilized to  
20 create the Welfare Fund, which terms are incorporated by reference into Caesar's CBA. The  
21 Welfare Fund is an intended beneficiary of Caesar's CBA and the Trust Agreement.

22 12. On or about November 1, 2011, Caesar's and Bistro executed and delivered that  
23 certain Memorandum of Agreement ("MOA") by and between Caesar's, Bistro and the Local  
24 Joint Executive Board, for and on behalf of the Unions, whereby it was agreed, among other  
25 things, that: (i) The employees employed in Culinary and Bartender positions at Bistro are  
26 included within the Unions' bargaining unit at Caesar's and are covered by the terms and  
27 conditions set forth in the Caesar's CBA in the same manner as other bargaining unit employees,  
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1 including those terms relating to the payment of fringe benefit contributions; (ii) Caesar's shall  
2 retain control of the terms and conditions of employment of the Bistro employees in bargaining  
3 unit jobs, and shall apply to them all of the terms and conditions of the Caesar's CBA; (iii) wage  
4 payroll functions are transferred to Bistro or its designee, including pay for benefit fund  
5 contributions because of hours worked by Bistro employees; and (iv) Caesar's shall be  
6 responsible for ensuring that any established violation of the Caesar's CBA or the MOA is  
7 properly remedied.

8 13. At all times material herein, Bistro has been an affiliate, designee, assignee, agent  
9 and/or alter ego of Caesar's for purposes of performing wage and payroll functions, including  
10 pay for benefit fund contributions, for the employees employed in Culinary and Bartender  
11 positions at Bistro.

12 14. At all times material herein, Caesar's and Bistro were obligated by Caesar's CBA,  
13 the MOA and the Trust Agreement to submit written reports to the Welfare Fund on a timely  
14 basis showing the identities of Bistro's Culinary and Bartender employees performing work  
15 covered by Caesar's CBA, the MOA and or Trust Agreement, and the number of hours worked  
16 by or paid to these employees. Further, Caesar's and Bistro promised that they would pay fringe  
17 benefit contributions to the Welfare Fund on a monthly basis and at specified rates for each hour  
18 worked by or paid to Bistro employees covered by Caesar's CBA, the MOA or the Trust  
19 Agreement. At all times material herein, Caesar's and Bistro were obligated to submit said  
20 monthly reports and pay said contributions to the Welfare Fund at their administrative office on  
21 or before the fifteenth (15th) day of each month following the work month in which hours of  
22 work covered by Caesar's CBA, MOA and/or the Trust Agreement were performed.

23 15. Bistro has been habitually delinquent on its monthly fringe benefit contributions  
24 to the Welfare Fund dating back to the month of November 2011, when the MOA was first  
25 signed.

26 16. Since March 2012, the Welfare Fund has repeatedly notified Bistro of its failure  
27 to timely remit the monthly reports and contributions.  
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1           17.     In October 2012, the Welfare Fund notified Caesar's of Bistro's delinquency for  
2 the months of July and August 2012. Thereafter, Caesar's began to withhold room service and  
3 other associated charges that would otherwise have been paid by Caesar's to Bistro, and instead  
4 paid all or a portion of said withheld monies to the Welfare Fund in order to satisfy portions of  
5 the delinquency.

6           18.     On or about November 9, 2012, Caesar's made a payment to the Welfare Fund in  
7 the amount of \$145,660.77 to satisfy Bistro's July delinquency and a portion of the August  
8 delinquency. No other payments have been received by the Welfare Fund since the date of  
9 November 9, 2012.

10           19.     Bistro has reported but failed to pay contributions for the months of September,  
11 October and November work months resulting in a delinquency for unpaid contributions in the  
12 amounts of \$262,923.78 owed to the Welfare Fund ("Current Delinquency"). Interest, liquidated  
13 damages and attorney's fees and costs have also accrued in an amount to be proved at trial and  
14 should be included in the Current Delinquency. Additionally, work was performed during the  
15 December 2012 work month that has not been reported or paid. The contributions owed for this  
16 and future work should be included in the Current Delinquency.

17           20.     To date, Defendants owe the Welfare Fund the sum of at least \$266,039.24, plus  
18 an amount to be determined to cover reasonable attorneys' fees incurred, all as required by 29  
19 U.S.C. § 1132(g) .

20           21.     Interest and liquidated damages will continue to accrue on all unpaid fringe  
21 benefit contributions until paid in full.

22                           **FIRST CAUSE OF ACTION**

23                   [Breach of Contract – 29 U.S.C. §§ 1132(g) & 1145 –Caesar's and Bistro]

24           22.     The Welfare Fund hereby restates and realleges the above allegations as though  
25 set forth fully herein.

26           23.     Defendants Caesar's and Bistro and have violated the terms of the CBA, MOA  
27 and Trust Agreement by failing to timely and accurately remit monthly contribution reports and  
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1 monthly fringe benefit contribution payments, as described above.

2       24. Defendant Caesar's has violated the terms of the CBA, MOA and Trust  
3 Agreement by failing to apply the terms and conditions of the Caesar's CBA and MOA to Bistro  
4 employees in Culinary and Bartender positions, including pay for benefit fund contributions  
5 owed for hours worked by such employees, and by failing to ensure that Bistro's violations of  
6 the CBA and MOA, as set forth herein, are properly remedied.

7       25. Defendants Caesar's and Bistro have violated the terms of the CBA, MOA, the  
8 Trust Agreement and 29 U.S.C. § 1145 by routinely and frequently failing to remit monthly  
9 fringe benefit contribution reports and payments to the Welfare Fund on time.

10       26. At all times material herein, Defendants Caesar's and Bistro were the agent,  
11 partner, employee and/or alter-ego of each other, and in doing the things herein alleged, were  
12 acting within the course and scope of said agency, employment or relation, with the permission  
13 and consent of their co-Defendants, and they worked together as a single entity and enterprise,  
14 and they are jointly and severally liable to the Welfare Fund for the Current Delinquency.

15       27. The Welfare Fund is entitled to recover from Defendants Bistro and Caesar's the  
16 amount of any and all unpaid fringe benefit contributions in an amount to be proven at trial.

17       28. Pursuant to 29 U.S.C. § 1145 and 29 U.S.C. § 1132(g)(2), Defendants Bistro and  
18 Caesar's owe the Welfare Fund accrued interest at the rates established in the CBA, MOA and/or  
19 Trust Agreement on all unpaid fringe benefit contributions from the dates the sums were  
20 originally due to the Welfare Fund to the date of judgment and thereafter, until paid in full.

21       29. Pursuant to 29 U.S.C. § 1132(g)(2), the Welfare Fund is entitled to recover from  
22 Defendants Bistro and Caesar's liquidated damages on all unpaid fringe benefit contributions at  
23 the rates set forth in the CBA, MOA and Trust Agreement in an amount to be proven at trial.

24       30. Pursuant to the CBA, MOA, Trust Agreement and 29 U.S.C. § 1132(g)(2), the  
25 Welfare Fund is entitled to recover their reasonable attorney's fees and costs of suit.

26       31. The Welfare Fund is entitled to recover a sum equal to the Current Delinquency,  
27 including any and all unpaid fringe benefit contributions and contract damages, plus accruing  
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1 interest, liquidated damages, attorney's fees, costs of suit and audit costs.

2 **SECOND CAUSE OF ACTION**

3 [Breach of Fiduciary Duty - 29 U.S.C. §§ 1002, 1104, 1109 & 1132 – Defendant Carl  
4 Halvorson]

5 32. The Welfare Fund hereby restates and realleges the above allegations as though  
6 set forth fully herein.

7 33. Under the terms of the Welfare Fund's Trust Agreement, Plan Assets are defined  
8 as contributions due and owing to the Welfare Fund, whether or not actually paid to or received  
9 by the Trust:

10 "Contributions made or required to be made pursuant to a collective bargaining  
11 agreement, participation agreement or other agreement acceptable to the Trustees . . . are plan  
12 assets, whether or not they are received or collected by the Welfare Fund." Welfare Fund  
13 Declaration of Trust, Art. 5.03.

14 34. Defendant Halvorson and one or more of the Doe and Roe Defendants  
15 ("Fiduciary Defendants") were the members, managers, officers, directors, owners, agents and/or  
16 individuals whose employment duties with Bistro required decision making regarding tracking  
17 employee hours, preparing and processing payroll and remittance reports, contributions and  
18 payments to the Welfare Fund for each hour of covered labor performed. The Fiduciary  
19 Defendants exercised authority and control relating to the management or disposition of Trust  
20 assets.

21 35. A "person is a fiduciary with respect to a plan to the extent" that he or she  
22 "exercises any authority or control respecting management or disposition of [plan] assets." 29  
23 U.S.C. § 1002(21)(A)(i) and (iii). The Fiduciary Defendants are therefore fiduciaries for  
24 purposes of ERISA, pursuant to the terms and provisions of the CBA, MOA, Trust Agreements,  
25 29 U.S.C. §§ 1002, 1104 & 1109 and 29 C.F.R. § 2510.3-102.

26 36. The actions of Fiduciary Defendants in failing to make required contributions to  
27 the Welfare Fund, materially harmed the Welfare Fund, placed the beneficiaries of the Welfare  
28 Fund at risk with regard to their benefits and constitute a breach of their respective fiduciary

1 duties to the Welfare Fund and their beneficiaries.

2 37. The Welfare Fund is entitled to recover a sum equal to the Total Delinquency  
3 from the Fiduciary Defendants.

4 **THIRD CAUSE OF ACTION**

5 [Injunctive Relief - 29 U.S.C. § 1132(a)(3) – Caesar’s and Bistro]

6 38. The Welfare Fund restates and realleges the above allegations as though set forth  
7 fully herein.

8 39. The actions of the Defendants in failing to timely and accurately remit reports and  
9 contributions to the Welfare Fund, as described herein, constitute contract breaches and  
10 violations of ERISA [29 U.S.C. § 1001 et seq.].

11 40. The contract breaches and ERISA violations identified above harm the Welfare  
12 Fund and place at risk the Welfare Fund’s ability to provide required employee benefits to its  
13 participants and beneficiaries.

14 41. The Welfare Fund’s remedies at law are inadequate to compensate the Welfare  
15 Fund or its participants from past harm caused by the Defendants, or to protect the Welfare Fund  
16 or its participants from harm or the threat of future harm caused by similar future violations.

17 42. The Welfare Fund is likely to prevail on the merits of its claims.

18 43. The Welfare Fund is entitled to a Court Order requiring: (i) that Defendants  
19 Caesar’s and Bistro accurately report and remit contributions to the Welfare Fund for all  
20 employees performing labor covered by the CBA no later than the fifteenth (15th) day of the  
21 month following the month in which the work was performed; (ii) that Defendants Caesar’s and  
22 Bistro immediately pay to the Welfare Fund all reported and admittedly owed unpaid  
23 contributions and related damages; (iii) that Defendant Caesar’s ensure that Bistro violations of  
24 the CBA and MOA, as set forth herein, are properly remedied, including, if necessary, paying all  
25 past due contributions and related damages to the Welfare Fund; and (iv) that Defendants ensure  
26 that any and all violations of the CBA and MOA as described herein are appropriately addressed  
27 and will not continue in the future.

**PRAYER FOR RELIEF**

WHEREFORE, the Welfare Fund prays for judgment against the Defendants, and each of them, as follows:

1. for a Court Order requiring: (i) that Defendants Caesar's and Bistro accurately report and remit contributions to the Welfare Fund for all employees performing labor covered by the CBA no later than the fifteenth (15th) day of the month following the month in which the work was performed; (ii) that Defendants Caesar's and Bistro pay to the Welfare Fund all reported and admittedly owed unpaid contributions and related damages; (iii) that Defendant Caesar's ensure that Bistro's violations of the CBA and MOA, as set forth herein, are properly remedied, including, if necessary, paying all past due contributions and related damages to the Welfare Fund; and (iv) that Defendants ensure that any and all violations of the CBA and MOA as described herein are appropriately addressed and will not continue in the future.

2. for unpaid fringe benefit contributions and damages for breach of contract and/or breach of fiduciary duty in an amount to be proved at trial;

3. for accrued interest on any unpaid fringe benefit contributions;

4. for liquidated damages in an amount to be proved at trial;

5. for the Welfare Fund's reasonable attorney's fees incurred herein;

6. for audit costs in an amount to be proved at trial;

7. for the Welfare Fund's costs of suit incurred herein;

8. for such additional relief as may be provided for by 29 U.S.C. § 1132(g); and

9. for such additional relief as the Court may deem just and proper.

DATED this \_\_\_\_th day of April, 2013.

CHRISTENSEN JAMES & MARTIN

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# **Exhibit B**

# **Exhibit B**

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6 Attorneys for Defendant  
7 DESERT PALACE, INC. d/b/a CAESARS PALACE

8 UNITED STATES DISTRICT COURT  
9  
10 DISTRICT OF NEVADA

11 UNITE HERE HEALTH, by and through  
12 its fiduciary, Matthew Walker,

13 Plaintiff,

14 v.

15 DESERT PALACE, INC. dba CAESAR'S  
16 PALACE, a Nevada corporation; BISTRO  
CENTRAL, LV, LLC dba CENTRAL  
24/7, a Nevada limited liability company;  
17 CARL HALVORSON, individually; JOHN  
DOES I-X, inclusive; ROE ENTITIES I-  
18 X, inclusive,

19 Defendants.

20 DESERT PALACE, INC. dba CAESAR'S  
21 PALACE, a Nevada corporation,

22 Cross-Claimant

23 v.

24 BISTRO CENTRAL, LV, LLC dba  
25 CENTRAL 24/7, a Nevada limited liability  
company,

26 Cross-Defendant.

Case No. 2:13-cv-0069-GMN-PAL

**DEFENDANT DESERT PALACE, INC.'S  
SECOND AMENDED ANSWER AND  
CROSS-CLAIM**

1 Defendant Desert Palace, Inc. (hereinafter “Defendant DPI”) answers the Complaint (Dkt.  
2 #1) as follows:

3 1. Answering Paragraph 1 of the Complaint, Defendant DPI admits that the Court has  
4 jurisdiction. Defendant DPI denies all remaining allegations of Paragraph 1, including, but not  
5 limited to, any allegation that Defendant DPI violated any statute or law.

6 2. Answering Paragraph 2 of the Complaint, Defendant DPI admits that venue is proper  
7 in this District. Defendant DPI lacks knowledge or information sufficient to form a belief about the  
8 truth of the remaining allegations set forth in Paragraph 2 of the Complaint, which has the effect of a  
9 denial.

10 3. Defendant DPI lacks knowledge or information sufficient to form a belief about the  
11 truth of the allegations set forth in Paragraph 3 of the Complaint, which has the effect of a denial.

12 4. Defendant DPI lacks knowledge or information sufficient to form a belief about the  
13 truth of the allegations set forth in Paragraph 4 of the Complaint, which has the effect of a denial.

14 5. Answering Paragraph 5 of the Complaint, Defendant DPI admits that Defendant  
15 Bistro Central, LV, LLC (“Defendant Bistro”) is a Nevada limited liability company doing business  
16 as a dining facility upon Defendant DPI’s premises. Defendant DPI denies the remaining allegations  
17 of Paragraph 5 of the Complaint.

18 6. Answering Paragraph 6 of the Complaint, Defendant DPI admits that Defendant Carl  
19 Halvorson (“Defendant Halvorson”) is an individual and the managing director of Defendant Bistro.  
20 Defendant DPI lacks knowledge or information sufficient to form a belief about the truth of the  
21 remaining allegations set forth in Paragraph 6 of the Complaint, which has the effect of a denial.

22 7. Defendant DPI lacks knowledge or information sufficient to form a belief about the  
23 truth of the allegations set forth in Paragraph 7 of the Complaint, which has the effect of a denial.

24 8. Defendant DPI lacks knowledge or information sufficient to form a belief about the  
25 truth of the allegations set forth in Paragraph 8 of the Complaint, which has the effect of a denial.

26 9. Answering Paragraph 9 of the Complaint, Defendant DPI admits that it is a Nevada  
27 corporation doing business as Caesars Palace and denies all remaining allegations of Paragraph 9.

28



1           10.     Answering Paragraph 10 of the Complaint, to the extent said Paragraph solely  
2 contains allegations against unnamed Doe and Roe defendants, Defendant DPI is under no duty to  
3 respond because such allegations are not directed towards Defendant DPI. To the extent Defendant  
4 DPI has a duty to respond, Defendant DPI denies the allegations of said Paragraph.

5           11.     Answering Paragraph 11 of the Complaint, Defendant DPI states that the allegation  
6 that the Welfare Fund is an intended beneficiary of Caesars' CBA and the Trust Agreement calls for  
7 a legal conclusion; as such Defendant DPI has no duty to respond to said allegation. To the extent  
8 Defendant DPI has a duty to respond to the allegation that the Welfare Fund is an intended  
9 beneficiary of Caesars' CBA and the Trust Agreement, Defendant DPI lacks knowledge or  
10 information sufficient to form a belief about the truth of said allegation, which has the effect of a  
11 denial. Defendant DPI asserts that it is not required to respond to the remaining allegations of  
12 Paragraph 11 of the Complaint because the documents referred to therein speak for themselves. To  
13 the extent a response is required, Defendant DPI denies the remaining allegations of Paragraph 11.

14           12.     Defendant DPI asserts that it is not required to respond to the allegations of Paragraph  
15 12 of the Complaint because the document referred to therein speaks for itself. To the extent a  
16 response is required, Defendant DPI denies the allegations of Paragraph 12.

17           13.     Defendant DPI denies the allegations of Paragraph 13 of the Complaint.

18           14.     Defendant DPI asserts that it is not required to respond to the allegations of Paragraph  
19 14 of the Complaint because the documents referred to therein speak for themselves. To the extent a  
20 response is required, Defendant DPI denies the allegations of Paragraph 14.

21           15.     Defendant DPI lacks knowledge or information sufficient to form a belief about the  
22 truth of the allegations set forth in Paragraph 15 of the Complaint, which has the effect of a denial.

23           16.     Defendant DPI lacks knowledge or information sufficient to form a belief about the  
24 truth of the allegations set forth in Paragraph 16 of the Complaint, which has the effect of a denial.

25           17.     Answering Paragraph 17 of the Complaint, Defendant DPI admits that it tendered a  
26 check dated November 8, 2012 to Plaintiff in the amount of \$145,660.77. Defendant DPI lacks  
27 knowledge or information sufficient to form a belief about the truth of the remaining allegations in  
28 Paragraph 17, which has the effect of a denial.

1           18.     Answering Paragraph 18 of the Complaint, Defendant DPI admits that it tendered a  
2 check dated November 8, 2012 to Plaintiff in the amount of \$145,660.77. Defendant DPI lacks  
3 knowledge or information sufficient to form a belief about the truth of the remaining allegations set  
4 forth in Paragraph 18, which has the effect of a denial.

5           19.     Answering Paragraph 19 of the Complaint, Defendant DPI lacks knowledge or  
6 information sufficient to form a belief about the truth of the allegations set forth therein, which has  
7 the effect of a denial.

8           20.     Defendant DPI denies the allegations of Paragraph 20 of the Complaint.

9           21.     Defendant DPI lacks knowledge or information sufficient to form a belief about the  
10 truth of the allegations set forth in Paragraph 21 of the Complaint, which has the effect of a denial.

11          22.     Answering Paragraph 22 of the Complaint, Defendant DPI repeats and re-alleges its  
12 answers to the allegations contained in Paragraphs 1 through 21 of the Complaint as though fully set  
13 forth herein.

14          23.     Defendant DPI denies the allegations of Paragraph 23 of the Complaint as to itself;  
15 Defendant DPI lacks knowledge or information sufficient to form a belief about the truth of the  
16 allegations of Paragraph 23 as to Defendant Bistro, which has the effect of a denial.

17          24.     Defendant DPI denies the allegations of Paragraph 24 of the Complaint.

18          25.     Defendant DPI denies the allegations of Paragraph 25 of the Complaint as to itself;  
19 Defendant DPI lacks knowledge or information sufficient to form a belief about the truth of the  
20 allegations of Paragraph 25 as to Defendant Bistro, which has the effect of a denial.

21          26.     Defendant DPI denies the allegations of Paragraph 26 of the Complaint.

22          27.     Defendant DPI denies the allegations of Paragraph 27 of the Complaint as to itself;  
23 Defendant DPI lacks knowledge or information sufficient to form a belief about the truth of the  
24 allegations of Paragraph 27 as to Defendant Bistro, which has the effect of a denial.

25          28.     Defendant DPI denies the allegations of Paragraph 28 of the Complaint as to itself;  
26 Defendant DPI lacks knowledge or information sufficient to form a belief about the truth of the  
27 allegations of Paragraph 28 as to Defendant Bistro, which has the effect of a denial.  
28

29. Defendant DPI denies the allegations of Paragraph 29 of the Complaint as to itself; Defendant DPI lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 29 as to Defendant Bistro, which has the effect of a denial.

30. Defendant DPI denies the allegations of Paragraph 30 of the Complaint.

31. Defendant DPI denies the allegations of Paragraph 31 of the Complaint.

32. Answering Paragraph 32 of the Complaint, Defendant DPI repeats and re-alleges its answers to the allegations contained in Paragraphs 1 through 31 of the Complaint as though fully set forth herein.

33. Answering Paragraph 33 of the Complaint, Defendant DPI is under no duty to respond because such allegations are not directed towards Defendant DPI. To the extent Defendant DPI has a duty to respond, Defendant DPI denies said allegations.

34. Answering Paragraph 34 of the Complaint, Defendant DPI is under no duty to respond because such allegations are not directed towards Defendant DPI. To the extent Defendant DPI has a duty to respond, Defendant DPI denies said allegations.

35. Answering Paragraph 35 of the Complaint, Defendant DPI is under no duty to respond because such allegations are not directed towards Defendant DPI. To the extent Defendant DPI has a duty to respond, Defendant DPI denies said allegations.

36. Answering Paragraph 36 of the Complaint, Defendant DPI is under no duty to respond because such allegations are not directed towards Defendant DPI. To the extent Defendant DPI has a duty to respond, Defendant DPI denies said allegations.

37. Answering Paragraph 37 of the Complaint, Defendant DPI is under no duty to respond because such allegations are not directed towards Defendant DPI. To the extent Defendant DPI has a duty to respond, Defendant DPI denies said allegations.

38. Answering Paragraph 38 of the Complaint, Defendant DPI repeats and re-alleges its answers to the allegations contained in Paragraphs 1 through 37 of the Complaint as though fully set forth herein.

39. Defendant DPI denies the allegations of Paragraph 39 of the Complaint.

40. Defendant DPI denies the allegations of Paragraph 40 of the Complaint.

41. Answering Paragraph 41 of the Complaint, Defendant DPI denies that Plaintiff is entitled to any damages or remedies whatsoever, whether at law or in equity.

42. Defendant DPI denies the allegations of Paragraph 42 of the Complaint.

43. Defendant DPI denies the allegations of Paragraph 43 of the Complaint.

44. Answering Plaintiff's "Prayer for Relief" on page 9 of the Complaint, Defendant DPI denies any and all allegations set forth therein and further denies that Plaintiff is entitled to any damages whatsoever.

45. Defendant DPI denies any allegations of the Complaint which are not expressly admitted above.

### AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred by the applicable statutes of limitations.

3. Plaintiff's claims are barred or limited to the extent that Plaintiff fails to provide appropriate information establishing that it had not received benefit contributions for each hour of covered labor.

4. Plaintiff's damages, if any, were not caused by Defendant DPI, rather they were caused by Plaintiff, Defendant Bistro, Defendant Halvorson, or third parties.

5. Plaintiff is seeking damages and penalties not in accordance with the terms and conditions of the applicable trust agreement.

6. Plaintiff is seeking damages and penalties not in accordance with the terms of the Employee Retirement Income Security Act of 1974.

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**CROSS-CLAIMANT DESERT PALACE, INC.’S CROSSCLAIM  
AGAINST CROSS-DEFENDANT BISTRO CENTRAL, LV, LLC**

Pursuant to Federal Rule of Civil Procedure 13(g), Cross-Claimant Desert Palace, Inc. (“Cross-Claimant DPI”) hereby crossclaims against Cross-Defendant Bistro Central, LV, LLC (“Cross-Defendant Bistro”) as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Cross-Claimant DPI is a Nevada corporation doing business in the State of Nevada.

2. Cross-Defendant Bistro is a Nevada limited liability company doing business in the State of Nevada.

3. This Court has original jurisdiction over Plaintiff’s Complaint (Dkt. #1) filed January 14, 2013 because Plaintiff brings its claims pursuant to the Labor-Management Relations Act of 1947 and the Employee Retirement Income Security Act of 1974. Thus, this Court has federal-question jurisdiction over the above-captioned matter.

4. This Court has jurisdiction over Cross-Claimant DPI’s Crossclaim against Cross-Defendant Bistro pursuant to 28 U.S.C. § 1367, which grants this Court supplemental jurisdiction over all related claims.

5. Venue is proper with this Court pursuant to 28 U.S.C. § 1391(b).

**ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

6. Cross-Claimant DPI owns and operates real property more commonly known as Caesars Palace located at 3570 S. Las Vegas Boulevard in Las Vegas, Nevada.

7. Effective January 18, 2011, Cross-Claimant DPI and Cross-Defendant Bistro entered into a valid and enforceable Lease Agreement that remains in full force and effect.

8. Pursuant to the Lease Agreement, Cross-Defendant Bistro leased, and continues to lease, an area within Caesars Palace for the operation and management of a restaurant (“Leased Premises”).

9. Cross-Claimant DPI has a collective bargaining agreement (“CBA”) with Culinary Union Local 226 (“Union”).

1           10.     In Article 5.12 of the Lease Agreement, Cross-Defendant Bistro acknowledged that  
2 Cross-Claimant DPI has a CBA with the Union and agreed to enter into an agreement with the  
3 Union and to comply with the terms of the CBA at all times.

4           11.     On December 16, 2011, Cross-Defendant entered into a Memorandum of Agreement  
5 (“MOA”) with the Union and Cross-Claimant DPI whereby Cross-Defendant promised to abide by  
6 the CBA.

7           12.     Article 25 of the CBA requires that contributions be made to UNITE HERE Health  
8 (formerly the Hotel Employees and Restaurant Employees International Union Welfare Fund)  
9 (“Welfare Fund” or “Plaintiff”) on a monthly basis for each hour worked, which is defined as “all  
10 hours for which an employee is compensated, including vacation and holiday hours paid for.”  
11 Article 25 of the CBA also sets forth certain reporting requirements.

12           13.     On January 14, 2013, the Welfare Fund filed a Complaint against Cross-Defendant  
13 Bistro and Cross-Claimant DPI (Dkt. #1) alleging that Cross-Defendant Bistro breached the MOA  
14 and CBA by failing to pay Plaintiff monthly fringe benefit contributions. Plaintiff’s Complaint also  
15 claims interest, liquidated damages, and attorney’s fees and costs. Plaintiff asserts damages  
16 presently totaling \$266,039.25, plus reasonable attorney’s fees.

17           14.     Cross-Claimant DPI has already incurred legal expenses to defend itself in this matter  
18 and to prosecute this Crossclaim.

19           15.     Article 12.1 of the Lease Agreement requires Cross-Defendant Bistro to defend,  
20 indemnify, and hold Cross-Claimant DPI “harmless against and from any and all loss, cost, damage,  
21 liability, penalty, lien, cause of action or claim of third parties, (including attorney fees and  
22 expenses) occurring, suffered or incurred as a result of (a) [Cross-Defendant Bistro]’s use of the  
23 Leased Premises or the Premises, the conduct of [Cross-Defendant Bistro]’s operations, or any  
24 activity, work, construction or thing done, permitted or suffered by [Cross-Defendant Bistro] in or  
25 about the Leased Premises or the Premises (including, without limitation, any additions, alterations,  
26 changes, improvements effected with [Cross-Claimant DPI]’s approval); or (b) any other act or  
27 omission of [Cross-Defendant Bistro] or any of its officers, shareholders, directors, agents,  
28 employees, contractors or licensees.”



1 Cross-Defendant Bistro must completely indemnify and hold Cross-Claimant DPI harmless for all  
2 damages for which Cross-Claimant DPI is found responsible.

3 24. Cross-Claimant DPI has been required to retain the services of an attorney to defend  
4 against the allegations in Plaintiff's Complaint and prosecute this Crossclaim and has thereby been  
5 damaged. Cross-claimant is, therefore, entitled to reasonable attorneys' fees and costs incurred.

6 **SECOND CLAIM FOR RELIEF**

7 **(Contribution)**

8 25. Cross-Claimant DPI incorporates by reference Paragraphs 1 through 24 as if fully set  
9 forth herein.

10 26. Cross-Claimant DPI is informed and believes that Cross-Defendant Bistro is  
11 responsible in whole or in part for any and all obligations, if any, owed to Plaintiff. If Plaintiff  
12 recovers against Cross-Claimant DPI, then Cross-Claimant DPI is entitled to contribution from  
13 Cross-Defendant Bistro according to Cross-Defendant Bistro's share of any obligation owed to  
14 Plaintiff by way of any sums paid to Plaintiff via settlement and/or judgment.

15 **THIRD CLAIM FOR RELIEF**

16 **(Breach of Contract)**

17 27. Cross-Claimant DPI incorporates by reference Paragraphs 1 through 26 as if fully set  
18 forth herein.

19 28. Cross-Defendant Bistro and Cross-Claimant DPI entered into a valid and existing  
20 contract in the form of a Lease Agreement.

21 29. Cross-Defendant Bistro breached the Lease Agreement by failing to comply with the  
22 obligation to make fringe benefit contributions to the Welfare Fund.

23 30. Cross-Defendant Bistro breached the Lease Agreement by failing to honor its duty to  
24 defend Cross-Claimant DPI.

25 31. Cross-Defendant Bistro breached the Lease Agreement by failing to honor its duty to  
26 indemnify and hold Cross-Claimant DPI harmless.

27 32. Cross-Claimant DPI has sustained damages as a result of Cross-Defendant Bistro's  
28 breach of contract.



**FOURTH CLAIM FOR RELIEF**

**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

33. Cross-Claimant DPI incorporates by reference Paragraphs 1 through 32 as if fully set forth herein.

34. Cross-Defendant Bistro and Cross-Claimant DPI are parties to a contract in the form of a Lease Agreement.

35. Cross-Defendant Bistro owed a duty of good faith to Cross-Claimant DPI to comply with the Lease Agreement, including the indemnity and duty-to-defend provisions as well as the obligation to comply with the MOA and CBA by making benefit contributions to the Welfare Fund.

36. Cross-Defendant Bistro breached the duty of good faith by failing to defend and refusing to indemnify Cross-Claimant DPI as well as failing to comply with the MOA and CBA by not making monthly fringe benefit contributions to the Welfare Fund.

37. Cross-Claimant DPI's justified expectations were thus denied by Cross-Claimant Bistro's breach of the duty of good faith.

WHEREFORE, Defendant/Cross-Claimant Desert Palace, Inc. prays for Judgment as follows:

A. That Plaintiff take nothing by virtue of its Complaint and that the same be dismissed with prejudice;

B. That Defendant/Cross-Defendant Bistro Central, LV, LLC be ordered to indemnify and/or contribute to any damages found to be due and owing to Plaintiff UNITE HERE Health by Defendant Desert Palace, Inc.

C. That Defendant/Cross-Claimant Desert Palace, Inc. be awarded the amount of its damages incurred as a result of Defendant/Cross-Defendant Bistro Central, LV, LLC's breach of contract.

D. That Defendant/Cross-Claimant Desert Palace, Inc. be awarded the amount of its damages incurred as a result of Defendant/Cross-Defendant Bistro Central, LV, LLC's breach of the implied covenant of good faith and fair dealing.

1 E. That Defendant/Cross-Claimant Desert Palace, Inc. be awarded its reasonable  
2 attorneys' fees and costs; and

3 F. For such other and further relief as the Court deems just and proper.

4 Dated: April \_\_, 2013

5 Respectfully submitted,

6  
7 

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RICK D. ROSKELLEY, ESQ.  
8 DUSTIN L. CLARK, ESQ.  
LITTLER MENDELSON, P.C.

9 Attorneys for Defendant/Cross-Claimant  
10 DESERT PALACE, INC. d/b/a CAESARS  
11 PALACE  
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**PROOF OF SERVICE**

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169-5937. On April \_\_, 2013, I served the within document(s): **DEFENDANT DESERT PALACE, INC.'S SECOND AMENDED ANSWER AND CROSS-CLAIM**



by serving the following parties electronically through CM/ECF.



by facsimile transmission at or about \_\_\_\_\_ on that date. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.



by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Las Vegas, Nevada addressed as set forth below.



by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Kevin B. Christensen  
Daryl E. Martin  
Laura J. Wolff  
7440 W. Sahara Avenue  
Las Vegas, NV 89117  
Attorneys for Plaintiff

William R. Urga  
L. Christopher Rose  
Tyler N. Ure  
3800 Howard Hughes Pkwy  
Suite 1600  
Las Vegas, NV 89169  
Attorneys for Defendant/Cross-  
Defendant Bistro Central, LV, LLC

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business. I declare under penalty of perjury that the foregoing is true and correct. Executed on April \_\_, 2013, at Las Vegas, Nevada.

\_\_\_\_\_  
Maribel Rodriguez

Firmwide:119469655.1 013234.2401

**Exhibit C**

**Exhibit C**

Jolley Urga Wirth Woodbury & Standish  
3800 HOWARD HUGHES PARKWAY, SUITE 1600, LAS VEGAS, NV 89169  
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

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2 Nevada Bar No. 1195  
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4 L. CHRISTOPHER ROSE, ESQ.  
5 Nevada Bar No. 7500  
6 lcr@juww.com  
7 TYLER N. URE, ESQ.  
8 Nevada Bar No. 11730  
9 tnu@juww.com  
10 JOLLEY URG, WIRTH  
11 WOODBURY & STANDISH  
12 3800 Howard Hughes Parkway, Suite 1600  
13 Las Vegas, Nevada 89169  
14 (702) 699-7500 Telephone  
15 (702) 699-7555 Facsimile  
16 Attorneys for Bistro Central, LV LLC dba  
17 Central 24/7 and Carl Halvorson

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 UNITE HERE HEALTH, by and through its  
14 fiduciary, Matthew Walker,

15 Plaintiff,

16 vs.

17 DESERT PALACE, INC. dba CAESAR'S  
18 PALACE, a Nevada corporation; BISTRO  
19 CENTRAL, LV, LLC dba CENTRAL 24/7, a  
20 Nevada limited liability company; CARL  
21 HALVORSON, individually; JOHN DOES I-  
22 X, inclusive; ROE ENTITIES I-X, inclusive,

23 Defendants.

Case No. 2:13-cv-00069-GMN-PAL

**[PROPOSED]**  
**BISTRO CENTRAL, LV, LLC dba**  
**CENTRAL 24/7 AND CARL**  
**HALVORSON'S FIRST AMENDED**  
**ANSWER TO COMPLAINT**

21 Defendant Bistro Central LV, LLC ("Bistro") and Carl Halvorson (collectively,  
22 "Defendants"), by and through their attorneys of record, Jolley Urga Wirth Woodbury &  
23 Standish, hereby answer Plaintiff's Complaint (the "Complaint") as follows:

24 1. Answering paragraphs 1, 2, 3, 4, 9, 10, 16, 17, 18, 19, 20, 21, 23, 24, 25, and 40  
25 of the Complaint, Defendants are without sufficient information or knowledge to either admit or  
26 deny the allegations contained therein.

27 2. Answering paragraph 5 of the Complaint, Defendants admit the allegations  
28 contained therein.

3. Answering paragraphs 8, 13, 15, 26, 41, and 43 of the Complaint, Defendants deny the allegations contained therein.

4. Answering paragraphs 22, 32, and 38 of the Complaint, Defendants repeat each and every response contained in each paragraph of their Answer and incorporate the same by reference as though fully set forth herein.

5. Paragraphs 27, 28, 29, 30, 31, 39, and 42 are legal conclusions to which no response is required, but to the extent a response is required Defendants deny the allegations contained therein.

6. Answering paragraph 6 of the Complaint, Defendants admit that Halvorson is an individual and member of Bistro, and deny the remainder of the allegations contained therein.

7. Answering paragraph 7 of the Complaint, Defendants admit that Halvorson is a member of Bistro and deny the remainder of the allegations contained therein.

8. Answering paragraphs 11, 12, 14, and 33 of the Complaint, Defendants state that the documents speak for themselves and are without sufficient information or knowledge to either admit or deny the remainder of the allegations contained therein.

9. Answering paragraph 34 of the Complaint, Defendants admit that Halvorson is a member of Bistro, deny that Halvorson is a fiduciary, and deny the remainder of the allegations contained therein.

10. Answering paragraph 35 of the Complaint, Defendants deny that Halvorson is a fiduciary. The remainder states legal conclusions to which no response is required, but to the extent a response is required Defendants deny those allegations.

11. Answering paragraphs 36 and 37 of the Complaint, Defendants deny that Halvorson is a fiduciary and deny the remainder of the allegations contained therein.

12. Any allegation not responded to above is hereby denied.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred by the applicable statutes of limitations.



## CERTIFICATE OF SERVICE

This will hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Jolley Urga Wirth Woodbury & Standish, 3800 Howard Hughes Parkway, 16<sup>th</sup> Floor, Las Vegas, Nevada 89169.

/s/ Kelly McGee